LIM KIM YIANG & ANOR.

v.

FOO SUAN SENG & ORS.

HIGH COURT, SINGAPORE
YONG PUNG HOW CJ
[DISTRICT COURT APPEAL NO. 40 OF 1990]
29 JUNE 1991

LANDLORD AND TENANT: *Tenancy agreement - Sale of premises - New owners issued notice to quit - Death of tenant - Whether tenancy assigned to children - Whether monthly tenancy or tenancy for life - Express vs implied terms of documents - Rental payable per month - Termination - Nature of relationship between the appellants and the respondents.*

A tenancy agreement (D2) was entered into by MK, the then owner of the said property, and CTE on 5 April 1973 for a monthly tenancy. In a document referred to as D3, it was indicated that the tenancy of the premises will be continued by the sons of CTE on her death or if she so assigns. This was also executed on 5 April 1973.

The appellants purchased the property from MK on 30 January 1983 and on 27 March 1984, served a notice to quit on CTE. On 15 April 1986 CTE died. The respondents were CTE's children none of whom resided on the premises. The ground floor of the premises had all along been used as business premises. The whole of the 2nd floor was occupied by a company.

The 1st respondent R1 is the licensee of the eating house at the premises and looks after the business. There are 5 stall holders in the premises who pay monies to the respondents.

The appellants began action in June 1988 to obtain vacant possession of the premises from the respondents and any others in occupation and an order for accounts and *mesne* profits, damages and costs. Their action was dismissed with costs and the trial Judge held that CTE had a life tenancy, followed by a monthly tenancy to her sons.

This is the appellants appeal against that decision.

The issue in the present case is the nature of the relationship between the appellants and the respondents, that is, whether it was a monthly tenancy or a tenancy for life. Appellants' Counsel contended that in the present case the notice to quit was valid, that the respondents' mother had become a statutory tenant and that the tenancy terminated on her death.

Held:

[1] The documents D2 and D3 indicate a monthly tenancy because of the key clauses 2 and 3 of D2. Clause 2 provides the rental per month and clause 3 provides that "the tenancy is to run from month to month". These express words must be given effect to unless there is good reason, otherwise it would not be possible by any stretch of imagination to construe the tenancy to be a tenancy for life given the express words "month to month".

[2] There was also no implication that the rents will not be raised nor a promise that the tenancy would not be terminated. This was another factor to indicate that it was a monthly tenancy.

[Appeal allowed with costs.]

Cases referred to:
Adams v. Cairns [1901] 85 LT 10 ***(dist)***
Breams Property Investment Co. Ltd. v. Stroulger [1948] 2 KB 1 ***(cit)***
Burton v. English [1833] 12 QBD 218 ***(cit)***
Charles Clay & Sons Ltd. v. British Railways Board [1971] 1 QB 725 ***(dist)***
Cheshire Lines Committee v. Lewis & Co. [1880] 50 LJ QB 121 ***(cit)***
Doed Warner v. Browne [1807] (8 East 165; 9 R. R. 397) ***(cit)***
Kingswood Estate Co. Ltd. v. Anderson [1963] 2 QB 169 ***(dist)***
Zimbler v. Abrahams [1903] 1 KB 577 ***(dist)***

Legislation referred to:
Landlord and Tenant Act 1954 [UK], s. 25
Law of Property Act 1925 [UK], s. 40

Other sources referred to:
Lewison on Interpretation of Contract paras. 6.03, 6.06 & 6.07

For the appellants - Tan Kok Quan; M/s. Lee & Lee
For the respondents - T Q Lim; M/s. T Q Lim & Co.

JUDGMENT

Yong Pung How CJ:

On 5 April 1973, a tenancy agreement was entered into by Mohd. Kassim s/o Allapitchay, the then owner of the property in dispute and Mdm Chiang Juat Eng. This agreement is reproduced in full below:

Tenancy Agreement

It is agreed between the undersigned parties as follows:

1. The landlord agrees to let to the tenant and the tenant agrees to be the tenant of the premises No.: 330-332, Serangoon Road, Singapore, previously rented to the tenant's husband, Mr. Foo Chee Wee.

1a. It is understood that the premises No.: 330-332, Serangoon Road, Singapore, as stated in clause 1, always include both the ground and first floors - No.: 330-332 and 330A-332A.

2. The rent shall be $263 per month, payable in the first week of each calender month.

3. The tenancy is to run from month to month.

4. The tenant shall be at liberty to assign, sublet or part with the possession of the premises or any part thereof.

5. It is understood that the landlord undertakes no liability for repairs or renovation. The tenant shall not make any structural alterations without the written consent of the landlord.

(thumb print)

Tenant's signature: ...
or right thumb print. Madam Chiang Juat Eng
(Mrs. Foo Chee Wee)
0299556-E

I/C No. : ...
(Signed)

Landlord's signature : ...
Inche Mohd. Kassim s/o Allapitchay
I/C No. : 0900103-D
...
Singapore dated this 5 April 1973.

This document will be referred to hereinafter as D2. On the next page hereinafter referred to as D3 there are the following words:

> The tenancy of the premises No.: 330-332, Serangoon Road Singapore will be continued by the sons of Madam Chiang Juat Eng (Mrs. Foo Chee Wee), on her death or if she so assigns.
>
> (Signed)
> Landlord's signature : ...
> Inche Mohd. Kassim s/o Allapitchay
> 0900103-D
>
> I/C No. : ...
>
> Singapore dated this 5 April 1973.

On 30 January 1983, the appellants purchased the property from Mohd Kassim s/o Allapitchay. On 27 March 1984, the appellants served a notice to quit on Madam Chiang. On 15 April 1986, Mdm Chiang died. The notice to quit is reproduced below:

> **A.R. Registered**
>
> To :
> Mrs. Foo Chee Wee
> 48 Jalan Buloh Perindu
> Singapore 1545
>
> Notice To Quit
>
> **RE: NOS. 330/330A/332 SERANGOON ROAD, SINGAPORE**
>
> As solicitors for Lim Kim Yiang, Chong Woon Leng and Ng Kim Lin, the owners of the above premises and your landlords, we are instructed to and do hereby give you notice to quit and deliver up to our clients vacant possession of the abovestated premises on 30 April 1984 or on the expiration of the month of your tenancy which will expire next after the end of one calendar month from the date of service of this notice.
>
> Dated 27 March 1984.
>
> Sd: Wee & Tay
>
> Solicitors for Lim Kim Yiang, Chong Woon Leng and Ng Kim Lin.

From the evidence of Foo Tiang Heng the 3rd respondent, none of the respondents ever resided there. At the time of the trial, Foo Tiang Heng resided at Toa Payoh; Dr. Foo Yong Chin (4th respondent) resided at Namly Grove; and Foo Yong Eng (5th respondent) resided at Jalan Ardat. Foo Suan Seng is the son of the 3rd respondent and does not reside there.

Foo Suan Seng (1st respondent) is the licensee of the eating house at the premises and is looking after the business. There are 5 stall holders operating in the premises. They pay a total of about $1,830 per month to the respondents. The ground floor of the premises had all along been used as business premises. The whole of the second floor is occupied by Siong Boey Express Ltd. which pays a sum of $150 per month.

Action was begun in June 1988 when the appellants claimed the following relief: judgment against the respondents for possession of the premises; an order requiring the respondents and any others in occupation to quit and deliver up vacant possession of the premises to the appellants forthwith; an order for account against the respondents; *mesne* profits from 16 April 1986 until the date of delivery of possession of the premises; damages; costs; and such further or other relief.

At the date of trial on 31 July 1990, the ground floor of the premises was still used as business premises. The second floor above that continued to be sublet to Siong Boey Express Ltd. After the trial, the learned district Judge ordered that the action be dismissed with costs. The appellants appealed and on 26 March 1991 I allowed the appeal with costs here and below. I now give my reasons.

The issue in the present case is the nature of the relationship between the appellants and respondents, in particular, whether it was a monthly tenancy or a tenancy for life. It is not in dispute that the Control of Rent Act applies to the premises.

Counsel for the appellants submitted that it was a monthly tenancy and that D3 provided for the situation, if she should die or assign before the tenancy was terminated. The learned district Judge was therefore wrong in holding that it was a life tenancy. The learned district Judge first held it was a monthly tenancy, then later in his judgment said that it was a tenancy for life, thereafter for the joint lives of sons; but did not give any reasons. Counsel submitted that even D3 did not give a tenancy for life. In the Court below the respondents' Counsel claimed an "implied term" that it was for life, when there was an express term that it was a monthly tenancy. Counsel for the appellants referred to several rules of construction. In construction, all parts of a document must be given effect. (*Lewison on Interpretation of Contract* paras. 6.03, 6.06 & 6.07). Terms will not be implied if inconsistent with express terms: express terms negative implied terms, para. 6.06. Where there is doubt, the proper course is to construe against party in whose favour document has been made: *Burton v. English* [1833] 12 QBD 218; *Contra proferentem* rule.

Appellants' Counsel then dealt with cases cited by the respondents in the District Court, beginning with *Zimbler v. Abrahams* [1903] 1 KB 577. In that case the action was brought to recover possession of a house. The defendant had been a weekly tenant of the house, and in October 1896, one Beron, as agent for the owners of the house, signed a document in the following terms:

> London, 5 October 1896. - I the undersigned, S. Beron, have let to Mr. Abrahams" (the defendant) "the house situate at 24, Morgan Street, Commercial Road, E., at a weekly rental of 23s., and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return to him the 6p. he has paid me on taking possession of the house. - S. Beron.

On 30 September 1901, notice to quit was given to the defendant on behalf of the plaintiffs, and as he refused to go out this action was brought. An application was made by the plaintiffs under O. XIV., and the action was directed to be tried as a short cause. The learned Judge gave judgment for the defendant, on the ground that he was not satisfied that there had been any breach of the condition as to the payment of rent as alleged by the plaintiffs.

The plaintiffs appealed. Vaughan Williams LJ at p. 582 said:

> I have then to look at the document and ask myself what interest was agreed to be granted by it. I have a difficulty in saying that the interest was to be merely a tenancy from week to week, for that would be to give effect to the earlier part of the document and none to the latter portion. If that is not to be taken as the meaning, the alternative seems to be that it was intended to grant to the defendant a lease of the house for his life subject to two conditions, one that the lessor might turn him out if he did not pay his rent regularly, and the other that the defendant could determine his own life estate by moving out.
>
> Speaking for myself I should, in the absence of authority, have doubted whether equity would have granted specific performance of an agreement of that sort, because the lessee may at once determine his life estate and make the lease futile.
>
> If the defendant is entitled to specific performance, it follows that he is not liable to be ejected; but I do not think that our order ought to end there, for it seems to me that the plaintiffs ought to recover in this action unless the defendant, who must be treated as if he had answered the claim of the plaintiff's by a counterclaim for specific performance, within fourteen days elects to ask for specific performance of this agreement, which would be granted upon condition of his paying all the arrears of rent now due. If this is carried out the appeal will be dismissed.

Counsel for the appellants distinguished the case as the landlord expressly agreed not to give notice to quit. He then referred to *Kingswood Estate Co. Ltd. v. Anderson* [1963] 2 QB 169 and distinguished it on the basis that, in that case, **"they would be there for the rest of their lives"**, therefore there was no need for a tenancy agreement. In that case the tenant, an elderly widow, had resided for about 45 years at premises controlled by the Rent Restriction Acts, of which she became the statutory tenant, her invalid son residing with her. Her landlords, a property development company whose managing director, Y., was also a partner in a firm of estate agents who acted for the company, were anxious to obtain possession of the premises for the purposes of development. Accordingly the landlords purchased another house and offered the tenant accommodation at a flat therein. Conversations then took place between the tenant and her daughters and Y at which **Y stated that in the event of the tenant moving to the flat together with her son, there would be no need for a tenancy agreement, as they would be there for the rest of their lives. On the faith of Y's representations, the tenant with her son moved in September 1959**, to the flat and paid rent, being supplied with a rent book of the type ordinarily used for a weekly tenancy. The landlords, having served the tenant with a notice to quit, claimed possession of the flat in the county Court, contending that the tenant had moved there on the terms that she was to become a contractual weekly tenant entitled to no more than four weeks' notice. The county Court Judge dismissed the landlords' claim. On appeal by the landlords, it was held, dismissing the appeal, that there was an oral agreement between the parties for a tenancy of the flat during the joint lives of the defendant and her son and the life of the survivor. Although there was no memorandum in writing to satisfy s. 40 of the Law of Property Act 1925, the tenant's acts in leaving the controlled premises and entering into possession of the flat were sufficient evidence of part performance to make the oral agreement enforceable in equity.

Counsel then distinguished *Adams v. Cairns* [1901] 85 LT 10 because in that case, whatever the term there was, the landlord could not raise the rent, which took away the landlord's right to terminate.

The agreement in that case was:

> I shall be pleased to accept you as tenant for barber's shop at the rental of seven shillings per week, the rent not to be raised during my present tenancy. (Signed) Charles Twine.

Williams LJ said at p. 11:

> On looking at this agreement, it is plain that the reservation of a rent of 7s. a week does not necessarily create a weekly tenancy. If there were nothing more than the reservation of a weekly rent, the inference would be drawn that there was a weekly tenancy. There is, however, something more that is, the provision, 'the rent not to be raised during my present tenancy.' That is the same as if the agreement said that the rent was not to be raised before 24 June 1901. That being so, we ought to give effect to those words if it is possible to do so. Quite apart from any question as to the tenancy, I see no objection to a stipulation not to raise the rent for a limited time. It is quite clear that the objections which were raised in the case of *Doed Warner v. Browne* (S East 165; 9 R. R. 397), upon a somewhat similar agreement, do not arise in the present case because there is a limit of time fixed by the words 'during my present tenancy,' during which the rent is not to be raised. So much for the question whether this is an agreement to which we can give effect. Apart from that question I would draw the inference from this agreement that it was intended that the term of the tenancy should be until 24 June 1901. If that is the right view to take of this agreement, the plaintiff, to the extent of the declaration prayed for, was clearly right at the trial. The reason why I am disposed to take that view is the stipulation that the rent is not to be raised must necessarily mean in law that the lessor will not determine the present tenancy and create a new one, and therefore necessarily implies a promise not to determine the tenancy. We ought, therefore, to construe this agreement as being really an assignment at a rent of the reside of the lessor's term. I agree, therefore, that this appeal must be allowed, and that there must be a new trial.

Appellants' Counsel contended that in the present case the notice to quit was valid, the respondents' mother had become a statutory tenant and the tenancy terminated on her death.

Counsel for the respondents contended that the learned district Judge was correct in that he found that she had a life tenancy, followed by a monthly tenancy to her sons. Alternatively if she had a tenancy from month to month, it was subject to a condition that it could not be terminated during her life time.

In addition to the earlier cases referred to, Counsel for the respondents also referred to *Charles Clay & Sons Ltd. v. British Railways Board* [1971] 1 QB 725. In that case landlords by an agreement in 1920 granted a six months' lease of land to the plaintiffs to continue from half-year to half-year until it should be determined. Clause 2 of the agreement provided for the determination by either party giving three months' written notice to quit to the other, subject to a proviso **"that this agreement shall not be so terminated by [the landlords] until they shall require the premises for the purposes of their undertaking."** The defendants, the successors to the landlords, purported to terminate the tenancy by serving a six months' notice to quit under s. 25 of the Landlord and Tenant Act 1954, and did not oppose an application to the Court under the Act for the granting a new tenancy. On application by the plaintiffs Foster J granted a declaration that the defendants' notice to quit was invalid on the ground that, the proviso in clause 2 not being repugnant to the nature of a periodic tenant, it precluded the landlords (who did not require the land for their own undertaking) from serving a notice to quit.

Russell LJ said on p. 733:

> Accordingly we hold that in the present case the proviso in clause 2 is not such as to negative the tenancy on the ground of uncertainty of duration. Moreover, we do this on the broad ground, and not on the narrow ground that the particular proviso leaves it open to the defendants by adjustment of the requirements of their undertaking to assume the power to determine the leasehold interest.

a There remains the question whether the proviso must in law be rejected as repugnant to the nature of the estate created - a half-yearly periodic tenancy.

Our instinct, as previously indicated, is to give effect if possible to the bargain made by the parties. It may well be that if in a periodic tenancy an attempt was made to prevent the lessor ever determining the tenancy, that would be so inconsistent with the stated bargain that either a greater estate must be found to have been constituted or the attempt must be b rejected as repugnant. But short of that we see no reason why an express curb on the power to determine which the common law would confer upon the lessor should be rejected as repugnant to the nature of the leasehold interest granted. In *Breams Property Investment Co. Ltd. v. Stroulger* [1948] 2 KB 1, a curb on the lessors for three years unless they required the premises for their own use was upheld in this Court, notwithstanding the earlier cases of *Warner v. Browne* [1807] 8 East 165 and *Cheshire Lines Committee v. Lewis & Co.* [1880] 50 LJ QB 121. It follows that in a periodic tenancy a similar curb for 10, 20 or 50 years c should not be rejected as repugnant to the concept of a periodic tenancy: and once the argument based on uncertainty is rejected we see no distinction in the present case.

Counsel for the respondents contended that D3 meant that on her death, D3 being exhausted, her sons became monthly tenants; if she assigned first, they became tenants for the remaining period of her life, then monthly tenants. Therefore D2 and D3 gave her a life tenancy, then a monthly tenancy to her sons; alternatively a monthly tenancy, subject to condition not d terminable during her life time by a notice to quit.

Documents D2 and D3 were accepted by both parties to be one document. In my opinion, the documents indicated a monthly tenancy because of the key clauses 2 and 3 of D2. The other clauses are not material for this purpose.

Clause 2 provides:

e

The rent shall be $263 **per month**, payable in the first week of each calender month.

Clause 3 provides:

The tenancy is to run from **month to month**.

The emphasis is mine. These are express words which must be given effect unless there is f good reason otherwise. The only possible reason is D3 where there is the phrase:

The tenancy ... will be continued by the sons of Madam Chiang Juat Eng (Mrs. Foo Chee Wee), on her death or if she so assigns.

This did not indicate to me a tenancy for life. As far as I could see the arrangement between Mohd Kassim and Mdm Chiang was not a family settlement where a tenancy for life commonly g arises. It appeared to me (although there was no evidence either way) that the relationship was at arms length. The document was simple.

In my opinion, it would not be possible by any stretch of imagination to construe the tenancy to be a tenancy for life given the express words **"month to month"**. *Zimbler v. Abrahams* could be easily distinguished because in that case the key words were

h ... I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move out, I promise to return to him ...

Kingswood Estate Co. Ltd. v. Anderson was also entirely different because of the representations made. There was no evidence of any representations here in the present case. *Adams v. Cairns* could also be distinguished because, since the rent was not to be raised, i there was an implication of a promise not to determine the tenancy. In the present case, there was no such implication about the rent.

Finally, I considered the argument based on *Charles Clay's* case of a month to month tenancy with a restriction. In that case, the proviso was:

> that this agreement shall not be so terminated by the [landlords] until they shall require the ... premises for the purposes of their undertaking.

There was simply no such restriction here. *Charles Clay's* case could not apply.

Accordingly, the appeal was allowed with costs here and below.

Also found at [1991] 3 CLJ 1939